

JOURNAL OF THE SENATE

EIGHTY-SEVENTH SESSION

THIRTY-THIRD DAY

STATE OF SOUTH DAKOTA
Senate Chamber, Pierre
Monday, March 19, 2012

The Senate convened at 10:00 a.m., pursuant to adjournment, the President presiding.

The prayer was offered by the Chaplain, Rev. Rolly Kemink, followed by the Pledge of Allegiance led by Senate page Emily Ketteler.

Roll Call: All members present except Sens. Adelstein and Kraus who were excused.

APPROVAL OF THE JOURNAL

MR. PRESIDENT:

The Committee on Legislative Procedure respectfully reports that the Secretary of the Senate has had under consideration the Senate Journal of the thirty-second day.

All errors, typographical or otherwise, are duly marked in the temporary journal for correction.

And we hereby move the adoption of the report.

Respectfully submitted,
Bob Gray, Chair

Which motion prevailed.

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Mr. President and Members of the Senate:

Respectfully submitted,
Dennis Daugaard
Governor

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The Honorable Matt Michels
President of the Senate
500 East Capitol Avenue
Pierre, SD 57501-5070

I respectfully return Senate Bill 194 with the following recommendations as to STYLE and FORM.

Senate Bill 194 is entitled, "An Act to make an appropriation to fund tax refunds for elderly persons and persons with a disability, to revise the income eligibility requirements for property tax and sales tax refunds, and to declare an emergency."

Section 7 amended the maximum multi-member household income in two places to "thirteen thousand ~~two~~ seven hundred fifty dollars." The first is found on page 4, line 17 and the second is on page 4, line 20 of the Senate Bill.

The bill failed to make that same change in a third place. On page 4, lines 18-19 of the Senate Bill, the maximum household income is described as "thirteen thousand *two* hundred fifty dollars."

This problem can be solved by making the following style and form correction to the Senate Bill as follows: On page 4, line 19, delete "two" and in its place insert "seven."

I respectfully request you concur with my recommendations as to style and form.

Respectfully submitted,

Dennis Daugaard
Governor

cc: The Honorable Val Rausch
The Honorable Jason Gant

March 16, 2012

The Honorable Matt Michels
President of the Senate
500 East Capitol Avenue
Pierre, SD 57501-5070

Dear Mr. President and Members of the Senate:

I respectfully return to you Senate Bill 157 with my VETO.

House Bill 157 is entitled, "An Act to revise certain provisions relating to outdoor advertising signs."

This bill arises from the current dispute over an initiated ordinance passed by Rapid City voters to regulate billboards in the city. After voters approved the measure, Lamar Advertising sued the city arguing that the ordinance was illegal. The city of Rapid City has defended the validity of its ordinance, asserting its authority to regulate outdoor advertising.

The Lamar Advertising litigation, which is currently pending in federal court, may turn upon the court's interpretation of South Dakota law on local regulation of billboards. Proponents of

Senate Bill 157 have argued that this bill would clarify existing law. The city argues Senate Bill 157 unnecessarily invades the local regulatory sphere.

It is inappropriate to pass a bill that would have such a direct impact on the outcome of pending litigation in an isolated local matter. Passing this bill will effectively decide the lawsuit in favor of one side before either side is heard in court.

I am also concerned about passing this statute so soon after Rapid City voters clearly expressed their view of digital billboards, passing the initiated ordinance with 66.1 percent of the vote in June of 2011.

There are valid arguments to be made on both sides of this dispute. The parties should be given an equal opportunity to argue their positions before a judge and jury. I am open to discussing how the state can improve its outdoor advertising laws, but in this unique instance, I believe this local and isolated instance should be resolved in the court of competent jurisdiction. Before we seek to change this law, we should understand the meaning of the current law.

It is for these reasons that I respectfully request you sustain my veto of Senate Bill 157.

Respectfully submitted,
Dennis Dugaard
Governor

HONORED GUESTS

The President introduced the Honorable Dennis Dugaard, Governor of the State of South Dakota. Senator Russell Olson addressed the body honoring Governor Dugaard for his leadership as President of the Senate from 2003 through 2010. The portrait of the former President of the Senate was dedicated with an unveiling by Senator Jason Frerichs.

The Governor expressed his appreciation to the Senate members.

MESSAGE FROM THE HOUSE

MR. PRESIDENT:

I have the honor to inform your honorable body that the House has approved HB 1058 as recommended by the Governor, pursuant to Article IV, Section 4, of the Constitution of the State of South Dakota, as to the Line Item veto. The recommendation of the Governor is found on page 735 of the House Journal

We hereby request your favorable consideration in approving the recommendation of the Governor as to the Line Item Veto on HB 1058.

Respectfully,
Karen Gerdes, Chief Clerk
by Arlene Kvislen

HONORED GUESTS

The President introduced Snow Queen representatives from Aberdeen, Miss Alexandra Mattern, Miss Aberdeen 2012, and Miss Erika Carrells, Junior Miss Aberdeen, 2012. The President also introduced the 2012 Miss Teen Great Plains from Mitchell, Alaina Bertsch.

CONSIDERATION OF EXECUTIVE VETOES AND RECOMMENDATIONS

The Senate proceeded to the consideration of the recommendation of the Governor as to change of style and form of SB 194 as found on page 672 of the Senate Journal, as provided in Article IV, Section 4, of the Constitution of the State of South Dakota.

The question being "Shall the recommendation of the Governor as to change of style and form of SB 194 be approved?"

And the roll being called:

Yeas 33, Nays 0, Excused 2, Absent 0

Yeas:
Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom); Haverly; Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Juhnke; Krebs; Lederman; Maher; Nelson (Tom); Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam; Rampelberg; Rave; Rhoden; Schlekeway; Sutton; Tidemann; Tieszen; Vehle

Excused:
Adelstein; Kraus

So the question having received an affirmative vote of a majority of the members-elect, the President declared the recommendation of the Governor as to change of style and form approved.

Sen. Olson moved that the Senate do now recess until 11:30 a.m., which motion prevailed and at 10:30 a.m., the Senate recessed.

1 **RECESS**

2 The Senate reconvened at 11:30 a.m., the President presiding.

3 **REPORTS OF JOINT-SELECT COMMITTEES**

4 MR. PRESIDENT:

5 Your Joint-Select Committee appointed to consider the matter of adjournment sine die of
6 the Eighty-seventh Legislative Session respectfully reports that the Senate and House of
7 Representatives adjourn sine die at the hour of 1:55 p.m., March 19, 2012.

8 Respectfully submitted,
9 Val Rausch
10 David Lust
11 Bernie Hunhoff
12 House Committee

Respectfully submitted,
Craig Tieszen
Shantel Krebs
James Hundstad
Senate Committee

13 Also MR. PRESIDENT:

14 Your Joint-Select Committee appointed to wait upon his Excellency, the Governor, to
15 inform him that the Legislature has completed its labors and is ready to adjourn sine die and to
16 ascertain if he has any further communications to make to the Legislature, respectfully reports
17 that it has performed the duty assigned to it and has been informed by his Excellency, the
18 Governor, that he will not appear for the closing of the Eighty-seventh Legislative Session.

19 Respectfully submitted,
20 Val Rausch
21 David Lust
22 Bernie Hunhoff
23 House Committee

Respectfully submitted,
Russell Olson
Corey Brown
Jason Frerichs
Senate Committee

24 **CONSIDERATION OF EXECUTIVE VETOES AND RECOMMENDATIONS**

25 The Senate proceeded to the reconsideration of SB 157 pursuant to the veto of the
26 Governor and the veto message found on page 673 of the Senate Journal as provided in Article
27 IV, Section 4, of the Constitution of the State of South Dakota.

28 The question being "Shall SB 157 pass, the veto of the Governor notwithstanding?"

29 And the roll being called:

1 Yeas 26, Nays 7, Excused 2, Absent 0

2 Yeas:

3 Begalka; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom); Heineman; Holien;
4 Hundstad; Hunhoff (Jean); Johnston; Krebs; Lederman; Maher; Novstrup (Al); Nygaard; Olson
5 (Russell); Peters; Putnam; Rave; Schlekeway; Sutton; Tidemann; Vehle

6 Nays:

7 Bradford; Haverly; Juhnke; Nelson (Tom); Rampelberg; Rhoden; Tieszen

8 Excused:

9 Adelstein; Kraus

10 So the bill having received an affirmative vote of a two-thirds majority of the members-
11 elect, the President declared the bill passed, the veto of the Governor notwithstanding.

12 The Senate proceeded to the reconsideration of HB 1058 pursuant to the line item veto of
13 the Governor and the veto message found on page 735 of the House Journal as provided in
14 Article IV, Section 4, of the Constitution of the State of South Dakota.

15 The question being "Shall HB 1058 pass, the line item veto of the Governor
16 notwithstanding?"

17 And the roll being called:

18 Yeas 28, Nays 4, Excused 3, Absent 0

19 Yeas:

20 Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom); Haverly;
21 Holien; Hundstad; Hunhoff (Jean); Juhnke; Krebs; Maher; Nelson (Tom); Novstrup (Al);
22 Nygaard; Olson (Russell); Putnam; Rampelberg; Rave; Rhoden; Schlekeway; Sutton;
23 Tidemann; Vehle

24 Nays:

25 Heineman; Johnston; Peters; Tieszen

26 Excused:

27 Adelstein; Kraus; Lederman

28 So the bill having received an affirmative vote of a two-thirds majority of the members-
29 elect, the President declared the bill passed, sustaining the Governor's veto.

1 Sen. Brown announced his intention to reconsider the vote by which HB 1058 passed.

2 Sen. Brown moved that the Senate do now reconsider the vote by which HB 1058 passed.

3 The question being on Sen. Brown's motion to reconsider the vote by which HB 1058
4 passed.

5 And the roll being called:

6 Yeas 30, Nays 0, Excused 5, Absent 0

7 Yeas:

8 Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Hansen (Tom); Haverly; Heineman;
9 Holien; Hundstad; Hunhoff (Jean); Johnston; Krebs; Lederman; Maher; Nelson (Tom);
10 Novstrup (Al); Olson (Russell); Peters; Putnam; Rampelberg; Rave; Rhoden; Schlekeway;
11 Sutton; Tidemann; Tieszen; Vehle

12 Excused:

13 Adelstein; Gray; Juhnke; Kraus; Nygaard

14 So the motion having received an affirmative vote of a majority of the members-elect, the
15 President declared the motion carried and HB 1058 was up for reconsideration and final
16 passage.

17 The Senate proceeded to the reconsideration of HB 1058 pursuant to the line item veto of
18 the Governor and the veto message found on page 735 of the House Journal as provided in
19 Article IV, Section 4, of the Constitution of the State of South Dakota.

20 The question being "Shall the recommendation of the Governor as to the line item veto of
21 HB 1058 be approved?"

22 And the roll being called:

23 Yeas 28, Nays 4, Excused 3, Absent 0

24 Yeas:

25 Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom); Haverly;
26 Holien; Hundstad; Hunhoff (Jean); Krebs; Lederman; Maher; Nelson (Tom); Novstrup (Al);
27 Nygaard; Olson (Russell); Putnam; Rampelberg; Rave; Rhoden; Schlekeway; Sutton;
28 Tidemann; Vehle

29 Nays:

30 Heineman; Johnston; Peters; Tieszen

1 Excused:
2 Adelstein; Juhnke; Kraus

3 So the question having received an affirmative vote of a majority of the members-elect the
4 President declared the recommendation of the Governor approved.

5 MOTIONS AND RESOLUTIONS

6 Sen. Tidemann moved that the rules be suspended for the sole purpose of introducing
7 Senate Commemoration 29.

8 The question being on Sen. Tidemann's motion that the rules be suspended for the sole
9 purpose of introducing Senate Commemoration 29.

10 And the roll being called:

11 Yeas 31, Nays 1, Excused 3, Absent 0

12 Yeas:

13 Begalka; Bradford; Brown; Buhl; Cutler; Frerichs; Fryslie; Gray; Hansen (Tom); Haverly;

14 Heineman; Holien; Hundstad; Hunhoff (Jean); Johnston; Krebs; Lederman; Nelson (Tom);

15 Novstrup (Al); Nygaard; Olson (Russell); Peters; Putnam; Rampelberg; Rave; Rhoden;

16 Schlekeway; Sutton; Tidemann; Tieszen; Vehle

17 Nays:
18 Maher

19 Excused:
20 Adelstein; Juhnke; Kraus

21 So the motion having received an affirmative vote of a two-thirds majority of the members-
22 elect, the President declared the motion carried.

23 **MESSAGE FROM THE HOUSE**

24 MR. PRESIDENT:

25 I have the honor to inform your honorable body that the House has approved SB 194 as
26 recommended by the Governor, pursuant to Article IV, Section 4, of the Constitution of the
27 State of South Dakota, for changes as to style and form.

28 Respectfully,
29 Karen Gerdes, Chief Clerk
30 by Arlene Kvislen

CONSIDERATION OF REPORTS OF COMMITTEES

Sen. Olson moved that the report of the Joint-Select Committee relative to informing his Excellency, the Governor, that the Legislature has complete its labors and is ready to adjourn sine die as found on page 676 of the Senate Journal be adopted.

Which motion prevailed.

Sen. Olson moved that the report of the Joint-Select Committee relative to fixing the time of adjournment sine die of the Eighty-seventh Legislative Session as found on page 676 of the Senate Journal be adopted.

Which motion prevailed.

RECOGNITION OF SENATORS

Senator Russell Olson acknowledged Senators Bob Gray, Tom Hansen, Jeffrey Haverly, Jim Hundstad, and Eldon Nygaard for their service in the Senate.

Each of the Senators, who are completing their final term in the Senate, addressed the body.

REPORT OF STANDING COMMITTEE

MR. PRESIDENT:

The Committee on Legislative Procedure respectfully reports that the House and Senate have, pursuant to the recommendation of the Governor as to corrections in style and form of SB 194, approved the recommendation and that the Office of Enrolling and Engrossing has engrossed the changes and has returned the same to his Excellency, the Governor, at 1:25 p.m., March 19, 2012.

Respectfully submitted,
Bob Gray, Chair

MESSAGES FROM THE HOUSE

MR. PRESIDENT:

I have the honor to inform your honorable body that the House has adopted the report of the Joint-Select Committee for the purpose of informing his Excellency, the Governor, that the

1 Legislature has completed its labors, is ready to adjourn sine die, and to ascertain if he has any
2 further communications to make to the Legislature.

3 Also MR. PRESIDENT:

4 I have the honor to inform your honorable body that the House has adopted the report of
5 the Joint-Select Committee for the purpose of fixing the time of adjournment sine die for the
6 Eighty-seventh Legislative Session.

7 Also MR. PRESIDENT:

8 I have the honor to inform your honorable body that the House has sustained the veto of
9 the Governor on SB 157.

10 Respectfully,
11 Karen Gerdes, Chief Clerk
12 by Arlene Kvislen

13 **COMMEMORATION**

14 SC 29 Introduced by: Senators Tidemann, Begalka, Bradford, Brown, Buhl, Cutler,
15 Frerichs, Fryslie, Gray, Hansen (Tom), Haverly, Heineman, Holien, Hundstad, Hunhoff (Jean),
16 Johnston, Juhnke, Krebs, Lederman, Maher, Nelson (Tom), Novstrup (Al), Nygaard, Olson
17 (Russell), Peters, Putnam, Rampelberg, Rave, Rhoden, Schlekeway, Sutton, Tieszen, and Vehle
18 and Representatives Munsterman, Abdallah, Blake, Bolin, Brunner, Carson, Conzet, Cronin,
19 Deelstra, Dennert, Dryden, Elliott, Fargen, Feickert, Feinstein, Gibson, Haggar, Hansen (Jon),
20 Hawley, Hickey, Hoffman, Hunhoff (Bernie), Hunt, Jensen, Jones, Killer, Kirkeby, Kirschman,
21 Kloucek, Kopp, Liss, Magstadt, Miller, Moser, Novstrup (David), Olson (Betty), Perry, Rausch,
22 Romkema, Schaefer, Schrempp, Scott, Sigdestad, Sly, Solum, Street, Stricherz, Tulson,
23 Turbiville, Van Gerpen, Vanneman, Venner, Verchio, White, Wick, Willadsen, and Wink

24 A LEGISLATIVE COMMEMORATION, Recognizing the achievements of the South Dakota
25 State University Women's and Men's Basketball Teams.

26 WHEREAS, the South Dakota State University Women's Basketball Team, coached by
27 Aaron Johnston, won its fourth straight championship at the Summit League Women's
28 Basketball Tournament to earn the league's automatic bid to the NCAA Tournament; and

29 WHEREAS, the Jackrabbit women posted a record of 24 wins with only 8 losses for the
30 season and are the league regular season champions; and

31 WHEREAS, the SDSU women have won every Summit League Tournament the team has
32 played in since becoming NCAA Division I eligible and is now 12-0 in tourney play and has
33 qualified for the Division I Championships in each of its first four years of eligibility; and

1 WHEREAS, Jennie Sunnarborg was named tournament Most Valuable Player and was
2 joined on the five-player All-tournament Team by Jill Young; and

3 WHEREAS, just hours after the South Dakota State women punched their ticket to the Big
4 Dance, the Jackrabbit men, coached by Scott Nagy, followed suit with a thrilling come-from-
5 behind overtime win over Western Illinois; and

6 WHEREAS, the Summit League Tournament win sends the South Dakota State men to the
7 NCAA Tournament for the first time at the Division I level with a season record of 27 wins and
8 7 losses; and

9 WHEREAS, tournament MVP Nate Wolters led the Jackrabbits and was joined by Jordan
10 Dykstra, with All-tournament Team honors:

11 NOW, THEREFORE, BE IT COMMEMORATED, by the Eighty-seventh Legislature of
12 the State of South Dakota, that the South Dakota State University Jackrabbits Women's and
13 Men's Basketball Teams be honored for their outstanding achievements in 2012.

14 The following prayer was offered by the President:

15 O Lord Our God, teach us to ask for the right blessings. Guide the vessel of our life toward
16 Yourself, the tranquil haven of all storm-tossed souls. Show us the course we should take.
17 Renew a willing spirit within us. Let Your Spirit curb our wayward senses and guide and enable
18 us to our true good, to keep Your laws and in all our deeds always to rejoice in Your glorious
19 and gladdening presence. For Yours is the glory and praise of all Your saints for ever and ever.
20 Amen.

21 Sen. Olson moved that the Senate do now adjourn sine die, which motion prevailed and
22 at 1:55 p.m. the Senate adjourned.

23 Fee Jacobsen, Secretary